SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 83.

JOSEFA DIANA MARTINEZ, JULIO N. CHARDON, CARLOS CABRERA, AND TOMAS TORRES. APPELLANTS,

vs.

LA ASOCIACION DE SENORAS DAMAS DEL SANTOS ASILO DE PONCE.

BRIEF FOR APPELLEE.

Statement.

FIRST.

General Analysis of Record.

Juan Bautista Silva, a citizen and resident of Porto Rico, and a bachelor, living near the city of Ponce, died on the 15th day of May, 1875, having on the 17th day of September, 1873, made and published his last will and testament which, after his death, was duly proven and put to record. By this will (Rec., pp. 49

to 53, incl.), after providing for his burial, the saying of certain masses, the distribution of a small fund among certain of the poor of the District of Ponce, he bequeathed to the two emancipated daughters of his slave Carmen, certain lands and personal property, and then, as he lacked forced heirs and had the right of disposing of his entire estate, he made disposition of his remaining properties in the following words (Rec., pp. 51, 52, 53):

> "all my other remaining property composed of lands, animals and debts in my favor which I have mentioned, that they be delivered and that my good friend Dr. Juan Apolinario Laboy of Ponce take possession of same, who is deserving of all my confidence since long ago, serves and attends to me in my illness disinterestedly, who I appoint and institute as my sole and only voluntary heir to said estate *during his life* under the distinct conditions that I impose on him, as hereinafter shall be stated.—First: That the net usufruct from said estate after paying the municipal taxes and others imposed for the same purpose, be divided in equal parts, one portion for said heir Laboy as a just recompense for his good administration and zeal for said interests, and the other portion to attend to the poor sick of the Santo Asilo de Caribad de las Damas at Ponce which liquidation of products and delivery of this part shall be executed at the end of each year by the same heir appointed administrator, without any other foreign intervention or interference of any kind whatever, as a duty to be performed by the dictates of conscience, and because the product of such properties as I leave depend more or less on the different seasons of the year being favorable or not and that the

rain fail not in the district. Second: As whereas it is my special object that my estate be not dismembered or divided, which has cost me so much privation and work, at the death of Laboy that it pass under the corresponding inventory and full statement of all the properties into the power and possession of the person who shall deserve the confidence of the said Don Juan Apolinario Laboy who shall have the same power and privileges and for the same object hereinbefore mentioned, for which object at the moment that in reason of my death he shall enter into possession of my estate he shall necessarily execute in due form his final will and testament wherein he shall determine the person who shall succeed him in said charge or trust, whose power of substituting which I grant for such object unto Laboy shall be transmitted by the latter, as I have said before, to a person having his confidence, and by him to a person deserving his confidence and so on successfully always by virtue of testament executed by them successively at the very moment that they shall be put in charge as substitute heir, and Third: That if in reason of this condition of this substitution not being complied with opportunely as I have recommended, if by reason of any claim of my relatives or strangers to me, or for any other reason or claim it should be wanted to have it or suppose it vacant or unbequeathed by will the said heirloom or otherwise the estate which constitutes same, I wish and it is my will that in the latter case, and at the death of the said Laboy, my first heir, that said estate be transmitted unto the said Santo Asilo de Damas at Ponce which I appoint as my substitute heirs, most especially recommending in this case to this association

> that said estate be preserved as far as possible under good administration and that only the net product obtained from same be employed in helping the poor sick of the said establishment."

After appointing Dr. Laboy administrator, and annulling any former wills made by him, the testator continues:

> "At this same act, and before closing this execution, I, the testator, declare, ordain and command that in case the inheritance should come to the Santo Asilo de Ponce as I foresee in the third condition of article six of this my will and testament, if for any reason there shall not exist or should this same charitable establishment disappear then the said inheritance shall be inherited under the same conditions and empowerments by the Instituto de Segunda Ensenanza of Ponce, and when this unfortunately shall not be in existence, the said inheritance shall fall to the work or establishment most deserving and in most need of the said town of Ponce, as I was born in said district and all my best wishes are in favor of same, and under no circumstance shall it be employed outside of the district under no pretext whatsoever or for any reason."

Dr. Laboy took possession of the estate devised, complied with the terms of the will as to payment of income to appellee, and a short time after the death of the testator, also observed the provision of the will as to his successor by making an instrument in which he named his wife, Dominga Fernandez Verdez.

He further provided in this instrument that in case of her death before qualifying, his foster son, then a boy some fifteen years of age, should be her substitute.

Dr. Laboy died in 188-, his wife succeeded to the estate, complied during her life with the requirement of the will as to payment of one-half the net income to appellee, but she died in January, 1891, having failed absolutely to discharge and keep the provision of the will as to the naming of her successor by a testament executed by her at the time she succeeded to the possession of the property. She had, however, in 1869, six years prior to the death of the testator Silva, made her own will, in which she named as her universal heir her foster son, Jose Laboy y Fernandez.

Upon the death of Dominga Fernandez y Verdez, the said Laboy, claiming possession under the will of his mother, executed in 1869, took possession of the property and immediately executed a paper wherein he named his wife, the appellant Josefa Diana Martinez, as his successor, and attempted to confer upon her the powers conferred upon himself by the will of his foster father when he named him as substitute heir should Dominga Fernandez not be living at the date of the death of Dr. Laboy.

Jose Laboy died in November, 1903, and upon his death appellant Martinez seized possession of the estate. During his life the younger Laboy made leases of certain of the lands devised by the testator Silva, of which leases appellee had notice, and under same appellee received its share of the rentals, but a short time before the death of Laboy he renewed several of these leases for long periods, beginning at the end of their existing terms, several years in the future, and running for long periods of time, some of them extending as late as the year 1919. These leases were

made at ridiculously low rentals, were made without the knowledge of appellee, and the appellant or Jose Laboy accepted their half of these rentals in advance, and at times even discounted their share for cash in hand, leaving the portions due the appellee unpaid.

After the death of the younger Laboy, his widow, the appellant Martinez, extended leases without notice, then obtained in her individual name, in *ex parte* proceedings, a possessory title to some of these lands, and afterward attempted to secure a title of dominion, but appellee, having been informed of these later proceedings, intervened and the court denied the application. In 1904 she ceased making any payments to appellee.

In July, 1905, appellee filed its bill of complaint against appellant Martinez and her co-appellants, Julio N. Chardon, Carlos Cabrera, and Tomas Torres, lessees of the lands in controversy, and this appeal involves the consideration by this court of the correctness of the action of the District Court of the United States for Porto Rico, in sustaining the claim of appellee—

> (*a*) to the control, possession, and full ownership of these lands, and in vesting in appellee the title in fee simple to the same;
>
> (*b*) in adjudging that appellee is the owner and entitled to possession of certain personal property;
>
> (*c*) in holding and decreeing null and void and cancelling leases made by Jose Laboy or appellant Martinez to her co-appellants, and directing the lessees to pay sums of money to appellee as rent for said lands during certain periods of their holding of same;

(*d*) in holding null and void the original lease made by appellant Martinez to her co-appellant Chardon, and

(*e*) in adjudging that the possessory title obtained by appellant Martinez to certain described portions of these lands was obtained by fraud was null and void, and directing the said possessory title to be cancelled in the registry of property.

Analysis of Bill of Complaint.

The complainant below, appellee here, the Asociacion de Senoras Damas Del Santos Asilo de Ponce, sets forth in its bill of complaint (Rec., pp. 1 to 13, incl.)—

(*a*) that it was a charitable organization, organized and existing under the laws of the Kingdom of Spain;

(*b*) that under the provisions of the will of Silva, heretofore referred to, it was entitled to the full possession and complete title to the estates of the said Silva from the date of the death of Dominga Fernandez Verdez, from the 15th day of January, 1891, on which date she died, for the reason that she had failed to execute an instrument naming her successor in the management and possession of the estate, and that neither Jose Laboy nor the appellant Josefa Diana Martinez had any right or title to the property, and that the same had been wrongfully and fraudulently taken possession of and held by them;

(*c*) that the appellant Martinez was fraudulently holding possession of said property, refusing to recognize the rights of appellee to even half of the net income, and that leases had been

made of portions of the property for long terms for thoroughly inadequate rentals;

(*d*) that appellee was appropriating to herself the assets of the estate and had obtained fraudulent and possessory title to nearly all of the real estate in controversy, and had attempted to secure a dominion title;

(*e*) that the lessees were charged with notice of the want of title in said Jose Laboy and appellant Martinez, and that the rentals fixed were so unreasonable and low that the contracts of lease were evidently fraudulent, and therefore null and void, and had been so from the date of making;

(*f*) that appellant Martinez had in her possession certain mortgage notes and other property belonging to the estate of Silva, to which appellee was entitled.

SECOND.

Analysis of Answer.

A demurrer was filed by defendants to complainant's bill, and this being overruled by the court (Rec., pp. 18, 19) defendants filed a plea (Rec., p. 20) which was overruled by the court *pro-forma* (Rec., pp. 20, 21), and thereupon answer was made by the defendants jointly (Rec., pp. 22 to 28, incl.).

The defendants claimed—

(*a*) that Jose Laboy became entitled to all the property left by Dominga Fernandez Verdez as her universal heir; that this included the estate of the decedent Silva; that said estate was simply affected by right of *usufructus* in favor of appellee; that the conditions of the will of

Silva with regard to the naming of a successor had not been violated; that said condition was originally null and void by reason of the laws existing at the time said will was made, because under these laws perpetuities were forbidden;

(*b*) that Jose Apolinario Laboy took possession of the estate of Silva, with the right to dispose of same by any act *inter vivos* or *mortis causa*, as the right of *usufructus* in favor of appellee was protected by being attached to the land;

(*c*) that the clause of the will with regard to the appointment of a successor by an instrument duly made was limited to the first taker of the estate under the will, Apolinario Laboy;

(*d*) that the possession and control of the property by appellant Martinez was not wrongful or fraudulent, and that the complainant was estopped from denying the appellant Martinez right of possession and control because they had accepted and received certain sums from her and from Jose Laboy as its share of the income of the estate;

(*e*) defendant Martinez admitted that she did obtain by judicial process a possessory title to said estates, but that she acted in good faith, recognizing the rights of appellee;

(*f*) that the rents agreed upon were reasonable at the time of the execution of the leases, and that the lessees had due notice of the fact that Jose Laboy, or appellant Martinez, had no power to execute the same;

(*g*) that the lease made to Chardon was made without notice that said Jose Laboy had no legal power to execute same, but that since the filing of the suit, appellee had entered into a contract with Chardon, wherein it was stipulated that if

> appellee should be successful in this litigation that it would make and execute a lease in favor of said Chardon to the same tract of land.*

And, lastly,

> the defendant Martinez claimed that the action was barred by the statute of limitations, for the reason that she and her predecessor in title had been in possession of the property more than ten years before the filing of the bill.

Analysis of Opinion, Decree, and Statement of Facts.

Replication was made to the answer, and the cause being tried before the court by consent of counsel, without the intervention of examiner or master, the court handed down on February 8, 1907, its opinion (Rec., pp. 29 to 40, incl.), on February 25, 1907, entered final decree (Rec., pp. 41 to 44, incl.), and a statement of facts filed April 4, 1907 (Rec., pp. 49 to 55, incl.).

In the first paragraph of the final decree (Rec., p. 41) the court states that it embodied its findings of fact and conclusions of law in the opinion filed on the 8th day of February, 1907. Therefore, we presume the facts stated in that opinion, as well as in the formal statement of facts, will be considered by the court.

In both the opinion and the decree every contention of complainant below, appellee here, was sustained. The court held distinctly that appellee had, on the 15th day of January, 1891, and still has, full legal power and capacity to receive and hold the property devised

* NOTE.—On page 35 of the record it appears that appellant Chardon, during the litigation, had agreed with the complainant, now appellee, to increase the rental of the 400 cuerdas he held from $240 per annum to $1,350 per annum, and on these terms the agreement was made.

by the decedent; that the trust terminated upon the failure of any trustee to nominate a successor in the manner specified in the will, and that upon such failure the legal title to the property passed to appellee and merged in its beneficial interest; that the legal title to all this property had been by operation of law vested in appellee since the death of Dominga Fernandez Verdeż on January 15, 1891; that the possessory title obtained by appellant, Josefa Diana Martinez, to two pieces of the property was null and void and should be cancelled; that the leases of appellants Cabrera and Torres were null and void because executed without authority, for an insufficient consideration, and with full notice of the interest of appellee in the property; that the possession of appellant Chardon was valid because of an agreement made between him and appellee after the institution of this suit; that the leases of appellants Cabrera and Torres should be cancelled, and that they should pay to the appellee certain fixed sums as rental for the lands occupied by them from the beginning of their leases until March 1, 1907.

The court held that appellant Martinez took no title by adverse possession, and that appellee was not barred by the statute of limitations from prosecuting its action to recover this property.

The facts as found both in the statement and in the opinion, we submit, fully sustain the decree entered.

Under the law and the decisions of this court these findings of fact the District Court are conclusive. Section 34 of the act of Congress of April 12, 1900, commonly called the Foraker act, creates a judicial district to be called the District of Porto Rico, with a

district court to be called the District Court of the United States for Porto Rico, and provides for the appointment of a judge, attorney, and marshal for this district, and in section 35 regulates the writs of error and appeals from the final decisions of this new court as follows:

> "That writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations, and in the same cases as from the Supreme Courts of the territories of the United States."

Section 2 of the act of Congress of April 7, 1874, concerning the practice in territorial courts and appeals therefrom, 18 Stats. at Large, at pages 27, 28, provides that—

> " The appellate jurisdiction of the Supreme
> " Court of the United States over the judgments
> " and decrees of said territorial courts in cases
> " of trial by jury, shall be exercised by writ of
> " error, and in all other cases by appeal accord-
> " ing to such rules and regulations as to form
> " and modes of proceeding as the said Supreme
> " Court have prescribed, or may hereafter pre-
> " scribe, provided that on appeal, instead of the
> " evidence at large, a statement of the facts of
> " the case in the nature of a special verdict,
> " and also the rulings of the court on the admis-
> " sion or rejection of evidence, when excepted
> " to, shall be made and certified by the court
> " below, and transmitted to the Supreme Court,
> " together with a transcript of the proceedings

> " and judgment or decree, but no appellate pro-
> " ceeding in said Supreme Court heretofore
> " taken upon any such judgment or decree shall
> " be invalidated by reason of being instituted
> " by writ of error or by appeal."

In the case of Harrison *vs.* Perea, an appeal from the Supreme Court of the Territory of New Mexico, 168 U. S., at page 323, this court said:

> "Our further examination must proceed upon the finding of facts as made by the court below, for this being an appeal from the Supreme Court of a territory, those findings are conclusive upon this court. The jurisdiction of this court on such an appeal, apart from exceptions duly taken to rulings on the admission or rejection of evidence, is limited to determining whether the findings of fact support the judgment."

The plan adopted by testator is neither unusual nor is, we conceive, contrary to law, whether civil or common. His desire is to establish a foundation to exist for all time for the benefit of the indigent sick of his neighborhood. He selects his friend and physician and commits to his custody and charge his entire estate as such foundation. The terms of the holding are fixed or, as the will states it, "under the distinct conditions that I impose on him as hereinafter shall be stated."

These conditions are clear and distinct (*a*) as to the nature of the holding, it being a trust or charge; (*b*) as to the compensation to be retained by the trustee; (*c*) as to the beneficiary and its rights; (*d*) as to the appointment of a successor by the original trustee, and

the appointment by this successor of one to follow him, and so on.

As to the vesting of the entire estate in a beneficiary, the appellee, should there be a failure in the line of successorship, as provided for in the will, and such failure being caused by any trustee neglecting to name, in the manner required, his successor, it is true that conditions which defeat estates are looked upon by the courts with disfavor, but a condition such as we find in this will does not defeat an estate, but in fact completes the full vesting in the chosen beneficiary. The beneficial interest merges into absolute title.

Even if under the law in force in Spain and her possessions when this will was made or probated appellee could not legally take or hold this property, we insist that advantage cannot be taken of this by appellant, but such advantage should be taken by the state or the heirs at law of Silva. In no way did the crown or insular authorities, or the heirs at law of Silva, from 1875, the date of the probate of the will, to 1898, the date of our occupancy of the island, question the legality of the disposition made by Silva of his property, or question the right of appellee to receive annually one-half of the net income of this estate.

ARGUMENT.

FIRST.

The court below clearly had jurisdiction.

The question of jurisdiction presented by the demurrer of defendant, now appellant, to the bill of appellee, was decided by the court adversely to the contention of appellant.

The first ground presented in the demurrer was that the District Court had no jurisdiction because all of the parties named in the bill were citizens of Porto Rico.

In the order overruling the demurrer (Rec., p. 19) appears the following language:

> "The first and third grounds of demurrer were so obviously frivolous that they were abandoned by counsel for the defendants at the argument."

The first ground, however, is presented and argued to this court with seeming confidence of its rightfulness.

Under the act of Congress of March 2, 1901, 31 Stats., 953, it is provided that

> "the jurisdiction of the District Court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the act of April 12, 1900, extend to and embrace controversies where the parties, or either of them, are citizens

> of the United States, or citizens or subjects of a foreign state or states."

The appellee is a corporation created by and organized under a royal decree of the Spanish crown, issued in 1863. It is not a corporation created and existing by and under any local laws in force or in operation in the island of Porto Rico before or at the time of its creation. It is a corporation existing by royal decree, and not under local statutes or law. It is a foreign subject and is not a citizen of Porto Rico, and this seems to have been found as a fact by the District Court. The respondents are all citizens of Porto Rico, the court finds (Rec., p. 30), and doubtless the court sustained its jurisdiction because the complainant, now appellee, was a foreign corporation.

The Foraker act of April 12, 1900, provides that

> "all inhabitants continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico; and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the crown of Spain on or before the 11th day of April, 1900, in accordance with the provisions of the treaty of peace between the United States and Spain, entered into on the 11th day of April, 1899."

Article 8 of said treaty provides—

> "and it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any

respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private, establishments, ecclesiastical or civic bodies, or any other associations having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals of whatsoever nationality such individuals may be."

The law has made the fullest provision for the protection of the property of private individuals and of corporations within the ceded territory. It has also provided a clear method by which the Spanish resident of Porto Rico could retain his allegiance to the crown, although continuing his residence in the island, but there is no provision of law, so far as we have been able to discover, under which a corporation created by the crown, located and owning property in Porto Rico, could by any court procedure become a resident local corporation of the island and in this way destroy its corporate allegiance, as it may be termed, to the crown. In other words, the law does not declare that a corporation created by royal grant, and existing in Porto Rico, shall become a citizen of Porto Rico, unless before the 11th day of April, 1900, it elected to preserve its allegiance to the crown.

SECOND.

What Was the Intention of Testator?

It is fundamental law that in the interpretation of wills the intention of the testator will be sought after and must control, if not inconsistent with established law or with public policy.

> "If, after such a plain and unequivocal declaration of the testator with respect to the disposition of his property, so cautiously guarding against, and providing for every supposed difficulty that might arise, any technical objection shall now be interposed to defeat his purpose, it will form an exception to what we find so universally laid down in all our books, as a cardinal rule in the construction of wills, that the intention of the testator is to be sought after and carried into effect."
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> Inglis *vs.* Trustees of the Sailors' Snug Harbor, 3 Peters, at page 113.

Article 675 of Walton's translation of the Spanish Civil Code in force in Porto Rico when the island was acquired is as follows:

> "Every testamentary disposition shall be understood in the literal sense of its words, unless it clearly appears that the will of the testator was otherwise. In case of doubt, that which appears nearest in accordance with the intent of the testator, according to the tenor of the same testament, shall be observed."

Section 683 of the Civil Code of Porto Rico, adopted in 1902, carries forward virtually without change this

old Spanish declaration with regard to the necessity of construing a will in accordance with the intention of the testator, so that both Spanish and American authorities agree as to the necessity of seeking after the primary intention and purpose of the testator, and allowing that intention to control where possible.

The dominant controlling purpose of Juan Bautista Silva declared in distinct and benign terms in his will was to devote his estate, the product of "much privation and labor," to the "poor sick" of his own neighborhood, the town of Ponce, "as I was born in said district, and all my best wishes are in favor of same."

He selects and designates his friend Dr. Laboy, "deserving of all my confidence," to take charge of this estate "*during his life*," and the net income of the property to be divided equally between Laboy and appellee, selected to distribute this fund among the poor sick under its immediate care and keeping.

The portion to be retained by Laboy is to be retained, in the language of the will, "as a just recompense for his good administration and zeal for said interests."

The testator fixes the amount of compensation to be paid to the manager or administrator of the estate, but in such way as to urge and incite fidelity and industry in the execution of the trust by making the amount of the compensation of Laboy and his successors depend upon the annual net earnings of the estate, and at the same time, with forethought and wisdom, he safeguards the interests of appellee representing the "poor sick," the real objects of testator's bounty, by making it an equal participant in the result of the trustee's or manager's fidelity and industry.

He provides for a continuation of this management by requiring Laboy to execute, when he entered into possession of the estate, his final will and testament, in which he shall name his successor "in said charge or trust" and Laboy to transmit this same power to his successor, and so on successively, always, however, by virtue of a testament executed successively at the very moment each successor shall be put in charge of the estate as substitute heir.

Then, foreseeing a possibility of this condition of his will as to substitution or successorship in management not being complied with, he provides expressly:

> "That if in reason of this condition of this substitution not being complied with opportunely as I have recommended, if by reason of any claim of my relatives or strangers to me, or for any other reason or claim it should be wanted to have it or suppose it vacant or unbequeathed by will the said heirloom or otherwise the estate which constitutes same, I wish and it is my will that in the latter case, and at the death of the said Laboy, my first heir, that said estate be transmitted unto the said Santo Asilo de Damas at Ponce which I appoint as my substitute heirs, most especially recommending in this case to this association that said estate be preserved as far as possible under good administration and that only the net product obtained from same be employed in helping the poor sick of the said establishment" (Rec., p. 52).

He urges appellee to see to it that the estate be preserved under good administration, and only the net product be employed in helping the poor sick, but he does not forbid sale or alienation of his realty.

Again, foreseeing the possibility of the condition as to the appointment of a successor to Dr. Laboy, or to one of his successors, not being obeyed, and thus the passing of the entire property absolutely to appellee, he provides that if at that time appellee should not be in existence, the estate should devolve on another institution at Ponce.

The declared intention, purpose, and desire of the testator was, through appellee or some similar institution, to succor and aid the sick poor of his native district. To him the personal recipients of his bounty would necessarily be strangers. It was human suffering and not the suffering of any distinct individual that appealed to his sympathy, and this gift is based on the broadest foundation of human sympathy. As this court has said:

> "It is no charity to give to a friend. In the books, it is said the thing given becomes a charity where the uncertainty of the recipients begins. This is beautifully illustrated in the Jewish law, which required the sheaf to be left in the field, for the needy and passing stranger."
> Fontain *vs.* Ravenel, 17 Howard, page 384.

There is no uncertainty as to the class to be benefited nor as to the instrument through which his bounty should be administered. It is a gift of charity in its highest sense, a gift to alleviate and administer to human suffering within a defined area, regardless of who may be the sufferers.

In considering an instrument creating a public charity the ordinary rules of construction apply in order to determine the intention of the testator, yet when it is

once determined that the donor intended to create a public charity very different rules will be applied from those recognized in establishing and administering private trusts, in order to give effect to the intention of the donor and establish the charity.

That relief of the sick poor of a community is a charitable use cannot be questioned, and in construing a will creating a charitable gift the Supreme Court of Massachusetts, speaking through Justice Gray, said:

> "This bequest is to receive such an interpretation, if possible, as will carry out the intention of the testator. A charitable gift, above all others, is to be so construed *ut res magis valeat quam pereat*. As Lord Chancellor Chelmsford said in the most recent case in the House of Lords upon the construction of general charitable bequests, 'If there are two meanings of a word, one of which will effectuate and the other will defeat the testator's object, the court is bound to select that meaning of the word which will carry out the intention and objects of the testator.' Whicker *vs.* Hume, 7 H. L. Cas., 154. And it is not for this court to forget that the constitution of Massachusetts declares (in words which may be supposed to have been in the mind of this testator when he framed his will) that 'it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to countenance and inculcate the principles of humanity and general benevolence, public and private charity.' Constitution of Massachusetts, c. 5, sec. 2."
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> 11 Allen, at pages 454, 455.

> "It is said that courts look with favor upon charitable gifts, and take special care to enforce

them, to guard them from assault, and protect them from abuse. And certainly charity in thought, speech and deed challenges the admiration and affection of mankind. Christianity teaches it as its crowning grace and glory; and an inspired apostle exhausts his powerful eloquence in setting forth its beauty, and the nothingness of all things without it."

Perry on Trusts, 3rd edition, sec. 687.

In Russel *vs.* Allen, 107 U. S., at pages 166, 167, this court said:

"By the law of England from before the Statute of 43 Eliz., ch. 4, and by the law of this country at the present day (except in those States in which it has been restricted by statute or judicial decision, as in Virginia, Maryland, and, more recently, in New York), trusts for public charitable purposes are upheld under circumstances under which private trusts would fail. Being for objects of permanent interest and benefit to the public, they may be perpetual in their duration, and are not within the rule against perpetuities; and the instruments creating them should be so construed as to give them effect if possible, and to carry out the general intention of the donor, when clearly manifested, even if the particular form or manner pointed out by him cannot be followed."

In McDonogh's Executors *vs.* Murdoch, 15 Howard, at page 403, this court, in considering the will of John McDonogh, deceased, says:

"We must look to the conveyances he has made in the instrument, the objects they are fitted to accomplish, and the agencies, if any,

> to be employed, and endeavor to frame these into a consistent and harmonious plan, accordant with his leading and controlling intentions. In reference to his controlling purpose there can be no mistake. He says 'that the first, principal, and chief object' in his view is, 'the education of the poor' of the two cities. With equal emphasis and precision he has disclaimed the desire of building the fortunes of his natural relations. He says 'that even to his children, if he had them (as he has not) and a fortune to leave behind him, he would, besides a virtuous education, to effect which nothing should be spared, bequeath to each but a very small amount, merely to excite them to habits of industry and frugality, and no more.'
>
> "His ruling purpose had no connection with the poor of any one generation. His desire was to establish a foundation to exist for all time, a perpetuity."

In the case at bar, the testator designates the holding of his property by his friend Laboy and his successors as a charge or trust, and he declares the nature, character, and extent of the estate taken by Laboy and those succeeding him the agencies that he employs in his establishment of a foundation to exist for all time for the sustenance and comfort of the poor sick of his locality. And we submit that under the will of this pious Spaniard, a charitable gift is established, and that therefore it is the especial duty of the court to guard it from assault and protect it from abuse, and that this gift to appellee will be sustained unless clearly inconsistent with established law, unless under the law appellee is without legal right to receive and hold the es-

tate and devote it to the purposes declared, or unless it is barred or estopped by its own negligence or laches from now prosecuting its claim.

In the case of Ortega *vs.* Lara, 202 U. S., at pages 342, 343, this court, speaking through the Chief Justice, said:

> "By the general rule of public law, recognized by the United States, whenever political jurisdiction and legislative power over territory are transferred from one nation to another, the laws of the country transferred, intended for the protection of private rights, continue in force until abrogated or changed by the new government. Of course, in case of cession to the United States, laws of the ceded country inconsistent with the Constitution and laws of the United States so far as applicable would cease to be of obligatory force; but otherwise the municipal laws of the acquired country continue.
>
> "Nevertheless, and apparently largely out of abundant caution, the eighth section of the act of April 12, 1900, provided: 'That the laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by act of Congress of the United States."

The learned judge before whom this case was tried, at page 37 of the Record, says:

> "Whatever may be the rule in Spain at the present time with reference to this sort of gift,—and we contend that it is the same as it is in the several States of the Union, and does not prohibit the same, we are of opinion that the general policy of the Government of the United States must now apply, unless the local law supervenes to prevent, which we do not think is the case."

We will argue and insist that no local law "supervenes to prevent," and that in view of the general policy of the United States with regard to protecting and upholding gifts devoted to public charities, the burden rests on appellant to show beyond question or doubt the existence of such a local law and its applicability to the case at bar.

THIRD.

Appellee Not Prohibited under Spanish Law from Receiving This Bequest.

At page 23 of brief for appellants we find this statement:

> "We never intended to claim, and never did claim that the complainant herein, Santo Asilo Delas Damas, was prohibited from receiving any charitable or any kind of bequest under the law of perpetuities and mortmains. Under the Spanish law by us quoted there is no such prohibition to bequeath any estate to a charitable institution, unless the will should prohibit any

> further alienation, which clause, by the way, would be void in a will instituting any person as heir, and not only a charitable institution."
>
> "It is not the fact that this complainant is a charitable institution that we ever pointed out as a defense in the case at bar. The complainant is perfectly able to take any bequest or legacy or devise under the laws of Spain, and we never attacked the right of the complainant."

There may be some question as to the legal correctness of this statement. There may be some doubt as to whether the testator could have devised his real estate directly to appellee without it being subjected to certain conditions with regard to sale of same.

Decree XXXVIII, of September 27, 1820, promulgated October 11 of the same year, Decretos de las Cortes, vol. 5, pages 145-149, provides as follows:

> "Article 15. No churches, monasteries, convents, and whatever other ecclesiastical societies, whether secular or regular, hospitals, charitable institutions, homes of mercy or educational institutions, brotherhoods, sisterhoods, fraternities, commanderies, and whatever other permanent establishments, either lay or ecclesiastical, known as mortmains, can acquire in future any real or immovable property in any part of the monarchy either by will or donation, purchase, permutation, confiscation of emphyteutic rents, payment of revenues due, or by any other lucrative or onerous way.
>
> "Article 16. Mortmains cannot impose or acquire in future for any reason, an interest on ground rents of whatever nature which are imposed on real property, nor impose or ob-

> tain tribute or other kind of lien on said property, whether it consists in the loan of a certain sum of money, or part of the products, or for any services in favor of mortmains, or any other annual tributes."

Article 26 of the laws of 1855, Coleccion Legislative de Espana, vol. 65, 1855, pages 5-6, 10, provides:

> "The properties donated and willed or which may hereafter be donated or willed to mortmains and which the latter might accept in accordance with the laws in force, shall be placed on sale or redeemed, as provided by the present law, as soon as they are declared to be the property of any of the corporations mentioned in article 1. (Article 1 includes brotherhoods, charitable and religious institutions.")

So far as we have been able to trace these laws, they were still in force at the time of the death of the testator herein, though they had been modified by enactments of later years, including the law of 1855, and they had been fully considered and construed by the Spanish courts in decisions handed down. Under those decisions, which would be quoted in full were it not for the admissions made in brief of appellant, it is very clear that although the law of October 11, 1820, reestablished by the law of 1856, prohibited mortmains from acquiring real estate or immovables, yet under the law of 1855 charitable institutions were expressly authorized to acquire real property, although upon condition of investing the entire proceeds of the sale into public securities. These cases had been decided before the writing and execution of the will herein,

and it is suggested that by reason of the knowledge of existing law and the court decisions construing same, the testator preferred to devise his property for life to Dr. Laboy, and then to succeeding holding trustees, rather than devise it directly to appellee, for fear that a sale of same would immediately thereby become necessary.

Reference is made by counsel for appellant to certain provisions of the Spanish Civil Code in force in the Island of Porto Rico at the time of its occupation by the United States. But the court will remember that this code went into effect in 1889, fourteen years after the death of the testator.

It is clear, under the provisions of this Code, articles 35 and 38, Walton's translation, that the appellee is now a juridical person, and can acquire and possess property of every class, but we find no reference to any statutory enactment different from those cited.

But whatever may have been the controlling reason, the language of the will is distinct and positive. And though Dr. Laboy is appointed and instituted as the sole and only voluntary heir of the estate, yet it is during his life and under certain distinct conditions with regard to the net usufruct or income of the estate. To accept the reasoning of counsel for appellant, we must look alone at the words "who I appoint and institute as my sole and only voluntary heir to said estate," disregarding absolutely other clauses and language, which show distinctly that the holding was for life, under certain fixed conditions, with the intention on the part of the testator not only that one-half of the profits of the estate should pass to appellee, but that under

certain circumstances the entire estate should vest in it, and if not in existence, then should vest in a similar institution, located at Ponce.

We do not find any basis for the argument on behalf of appellant that the testator Silva intended to make Laboy the real heir of his estate, and the reversion to appellee was limited to a reversion to occur at the death of Laboy without the naming of a substitute by him.

The language of the will is perfectly clear with regard to the appointment of successors by Laboy, and those following him, and then perfectly distinct as to the passing of the estate to appellee should any successor of Laboy fail to comply with the requirements of the will as to the naming and appointment of his own successor. The will says:

> "That if in reason of this condition of this substitution not being complied with opportunely as I have recommended, if by reason of any claim of my relatives or strangers to me, or for any other reason or claim it should be wanted to have it or suppose it vacant or unbequeathed by will, the said heirloom or otherwise the estate which constitutes same, I wish and it is my will that in the latter case, and at the death of the said Laboy, my first heir, the said estate be transmitted unto the said Santo Asilo de Damas at Ponce which I appoint as my substitute heirs."

As we understand this language, the testator directs, first, that if there be a failure to comply with the condition of substitution, then the estate to pass to appellee, or if by reason of any claim of relatives or strangers

it should be supposed that the property was unbequeathed or became vacant, then in this case and at the death of said Laboy the said estate was to be transmitted to appellee.

We understand the testator to state two distinct conditions under which the estate passed to appellee, first, on failure of substitution whenever that occurred; secondly, if by reason of any claim of relatives or strangers the said heirloom became vacant or unbequeathed at the death of Laboy, then the transmission occurred.

Appellant insists that the testator intended for his whole estate to revert to appellee in case Dr. Laboy did not comply with the condition as to naming a substitute, and that this reversion would occur at that time by reason of that contingency, and at no other time. That Laboy complied with the condition, named a substitute, and therefore at no future time could the contingency arise or the reversion occur.

This contention is, in our judgment, absolutely unfounded, and is overthrown simply by reading the language of the will. Under the terms of the written instrument the only power Laboy or any successor had was to hold, manage this estate, divide the proceeds equally between himself and appellee, and transmit this possession and power of management and control to a successor through a distinct instrument to be executed at a named time. According to the contention of appellant, Laboy had the power to name his successor, but beyond that the power could not extend.

FOURTH.

The Silva will, as an entirety, is valid, and no part of same void because establishing a perpetuity or creating a fidei commissum.

At page 25 of appellant's brief the argument is presented that the will of Silva is valid except as to the condition regarding substitution and successorship; that there was a prohibition of alienation imposed upon all the successive heirs under said will in perpetuity, which prohibition is void and must fall.

It is not necessary to enter into a discussion of what in fact constitutes a *fidei commissum* in civil law. This has been fully considered by this court in the case of McDonogh's Executor *vs.* Murdoch, 15 Howard, 367.

The Spanish decisions hereafter quoted draw a distinction between trusts established for a family and for a charity, between an effort to prevent alienation of property for the resulting benefit and protection of descendants, and for the benefit of the poor. The Roca case, referred to by the court below in its opinion, and other decisions of the Spanish courts sustain every contention of appellee as to the validity of this will, and especially with regard to its right of succession to the estate upon the failure of the second trustee, the widow of Dr. Laboy, to comply with the terms of the written instrument with regard to naming her own successor.

> "Mr. Vincente Roca devised a large estate in favor of the sick poor domiciled in Badalona, and appointed, as administrators of the property the parish priest and vicar, both present and

future, and the heir of the home named Roses, who were to devote the proceeds thereof to the pious purposes to which they were intended. The heirs of Mr. Vincente Roca contested the legacy, alleging that it constituted an unlawful entail, and petitioned the court to order the administrators to restore the estate to them. This was denied in two instances. An appeal was taken in the second instance and again denied by the Supreme Court, which held that,

> "'Whereas, the essential character of the entailment of property consists in the absolute prohibition of its alienation, and that this condition, being contrary to the natural liberty of contracting, it cannot be presumed, and can only be accepted in cases in which it has been clearly established:
>
> "'Whereas, the mortmains which the law of Oct. 11, 1820, has rendered incapable of acquiring all classes of property, are the lay or permanent ecclesiastical establishments, which according to their by-laws and regulations cannot dispose the ownership of their property, and whereas, the legacy in favor of the sick poor * * * and their families, does not prohibit the alienation of the property devised, and not having been declared in favor of any mortmain, previously established, or created in the will, although persons having a certain calling are named as administrators of said property both in the present and future; it is evident that no entail has been established or amortozation of those prohibited in the law #12, title XVII, book 10, of the New Recop, and in the law of Oct. 11, 1820. "Court 1, Sentence, of Dec. 29, 1886.—Reported in the Official Gazette May 16, 1887, page 117.)'

"The same doctrine will be found in an opinion rendered November 3, 1890 (Official Gazette, Jan. 24, 1891), which expressly refers to that of Dec. 29, 1886.

"Neither the law of Oct. 11, 1820, nor any other law, prohibits an annual and perpetual legacy to be made in favor of a charitable institution, provided that in the form of such legacy, no direct or indirect amortization of property is made, or its circulation prohibited. And even when, in order to satisfy such legacy, it will be necessary to encumber part of the property, charitable institutions are authorized by the law of May 1, 1855, which has modified essentially articles 14, 15 and 16 of the law of Oct. 11, 1820, to accept or acquire real property, even upon condition of investing the entire proceeds derived from the sale of said property into public securities. Any opinion which declares such legacy void, is in contravention of law 28, title IX Partida 6, and the jurisprudence established by the Supreme Court which maintains the stability of institutions of a charitable character which have not been created for the benefit of certain persons or families.

"The same doctrine relating to the acquisition of property by charitable institutions is expressed in an opinion rendered Dec. 27, 1879 (Official Gazette, Feb. 7, 1880), also, Feb. 13, 1880 (Official Gazette, April 5), and Oct. 15, 1880 (Official Gazette, Oct. 30, *idem.*).

> "'45. Charitable institutions which cannot be considered as having been created in favor of a family (familiares) and to which, therefore, the law of 1820 is not applicable.'

"Such charitable institutions in which no special family or persons are called to participate in the object of their creation, cannot be considered as family institutions (fundaciones familiares) nor are the provisions of the law of Oct. 11, 1820, applicable in this case, in as much as said law does not refer to other institutions but to those really relating to families or persons. (Opinion of Oct. 10, 1868, reported in the Official Gazette, Feb. 26, 1869; also Dec. 9, 1880, reported Official Gazette, Dec. 23, 1880.)

"An institution in which strangers or persons not related to the family of the founder, or to that designated by the latter as of lineage, are called to participate in its property or income; is not to be termed a family institution, even though those claiming relationship are asked to participate, and are given preference; as this fact does not alter the character of the institution, as it has been repeatedly held by the Supreme Court. (Opinion July 5, 1875. Official Gazette Sept. 4, 1875.)

"The same is held in an opinion rendered on Jan. 20, 1880 (Official Gazette, Mar. 15), and Sept. 20, 1880 (Official Gazette, Oct. 19).

"The same is true of an institution for the endowment of orphans, even though preference may be given to the feminine lineal descendants of the founder. (Opinion, Dec. 31, 1887, reported Off. Gaz. April 16, 1888.)

"An institution not having a family character is not governed by the law of Oct. 11, 1820. (Op., *supra,* quoted, also, Feb. 9, 1889, Off. Gaz. June 3 and 4.)

> "'46. What *fidei commissa* are prohibitted by the law of 1820.'

"The provisions of article 1, of the law of

Oct. 11, 1820, abolishing all rights of primogeniture, *fidei commissa*, and all other species of entail, do not refer to temporary and alienable *fidei commissa*, but those in perpetuity, the alienation of which is prohibited. (Opinion, April 22, 1865, May 29, 1866, Dec. 21, 1867.)

"Temporary and not perpetual *fidei commissa* are considered those which are limited to a special generation, more so, when no provision is attached restraining their alienation." (Op., April 21, 1886.)

Martinez-Alcubilla "Diccionario de la Administracion Espanola," vol. 7, pp. 1013-1014.

The whole trend of Spanish decisions is to sustain these gifts to charities, and never to presume the prohibition of alienation.

Referring again to the fact that the laws of 1820 were modified by the laws of 1837 and 1855, we quote again from Alcubilla, vol. 7, pages 829-830:

"Opinion of Feb. 23, 1857.—The prohibition in articles 15 and 16 of the law of Oct. 11, 1820, to acquire immovable property, or hold or impose any encumbrance on same, applies only to corporations and establishments known as mortmains, but it does not extend to legacies or donations of the proceeds from the properties.

"In an opinion rendered Dec. 28, 1861, overruling a motion to set aside a judgment of the Court of Valencia, holding that the General Hospital in that city possessed the power of inheritance, the following doctrine was established:

" '1st. That the three instances when foreign heirs are able to inherit in accord-

ance with the provisions of the law 22, title 3 of Partida 6, are at the time of the execution of the will, at the death of the testator, and when the parties named in the will are *declared to be the heirs:*

" '2d. That the Valencia Hospital had the capacity of receiving the inheritance of Mrs. Vicenta Ibanez, when she made the will (Jan. 23, 1828), and when she died (Feb. 27, 1830) and when to give effect to its provisions, said hospital came into possession of the property:

" '3d. That, supposing the third or *temporal* instance referred to in the law cited, to be that in which said hospital came into the actual possession of the inheritance, it held at that time, July, 1858, the necessary power to inherit by virtue of the law of May 1, 1855, expressly authorizing charitable institutions to receive and acquire real property, with the condition, however, of converting the same into public securities.

" '4th. That the judgment of the Court of the First Instance of Valencia, was not against the law cited, nor that of Sept. 27, or even that of Oct. 11, 1820, as articles 1 15 and 16 of this latter law were essentially modified by that of May 1, 1855, already referred to, and by other provisions, and

" '5th. That in the opinions rendered by this supreme tribunal (Oct. 7, 1852, and July 26, 1854), and the doctrine therein expressed which it is alleged has been violated, were written before the enactment of the law of May 1st, as the dates indicate, and that in the first case the charitable establishments benefited by the legacy were capable

of inheriting not only under the third instance designated by the Partida law, but under the first and second as well.'

"Opinion April 13, 1863.—Court No. 3 of Oyer and Terminer of Barcelona in a judgment rendered on Feb. 16, 1861, refused a petition to annul a legacy of real property made by Don Jose Fernandez on July 27, 1839, in favor of an hospital and two charitable institutions of said city. An appeal to reverse was not entertained by the Supreme Court which confirmed its previous important decisions, saying that:

"'Although the law of Oct. 11, 1820, reestablished by the law of 1856, prohibited mortmains from acquiring real estate or immovables; articles 14, 15 and 16 of said law were essentially modified by that of May 1, 1855, which expressly authorized charitable institutions to acquire real property, although upon condition of investing the entire proceeds of the sale into public securities:

"'That, by virtue of the provisions of said law, the hospital of Santa Cruz de Barcelona, and the two institutions known as the homes of Mercy and for Orphan Children, were capable of receiving and acquiring the proceeds of sale, of the property devised to them by Don Jose Jaumandreu? (Fernandez) on July 27, 1839, upon condition as aforesaid.'

"Opinion April 30, 1866.—Dona Maria Vaamonde left two houses, the one to a certain person, and the other to the congregation of Neustra Senora de los Dolores, after the death of her husband, whom she named her heir and who was to enjoy the income therefrom during life.

"The husband contracted a second marriage; and upon his death he constituted as his absolute heir his wife Dona Adelaida Osendo, who, supported by articles 15 and 16 of the law of October 11, 1820, filed a suit against the congregation asking that the legacy be declared void, and that the house left to it be merged in the general inheritance. The case was twice decided against her, and a request for an appeal to reverse on the ground that the laws have no retroactive effect, and that the decisions were contrary to the law cited, #22, title III and #1, title IX Partida (Laws of Castile, compiled by King Alphonse the tenth), was denied by the Supreme Court, which declared that:

> "'Whereas the death of the aforementioned Lago, occurred on August 8, 1863, when the law of May 1, 1855, which essentially modified that of October 11, 1820, was in force, the provisions of that law are applicable to this case, which provisions far from declaring the corporations called mortmains incapable of acquiring property, among which the one in question is also mentioned, as per article 1 of said law, they definitely state in article 26, that in future said corporations may accept in accordance with the laws in force, legacies and donations without any other restriction except that of disposing of the property left and donated, as soon as same is declared to be owned by the corporation.'"
>
> Martinez Aleubilla "Diccionario de la administration Espanola," vol. 7, pp. 829-830.

From these authorities it seems abundantly clear that a charitable institution such as appellee could take property directly or as a beneficiary under a trust created in its favor.

In the Roca case the parish priest and the vicar, both present and future, and the heir of a certain named home, were appointed administrators of the property, and were to devote its proceeds to the sick poor. Under the Roca will, as a priest or vicar died, or was transferred, his successor became a trustee of the fund, while under the will at bar each trustee named his own successor.

In both of these cases property was to be held and administered for the benefit of the poor sick, and in neither case was there absolute prohibition against alienation.

But if the contention of counsel for appellant be true, that the will of Silva attempted to establish a *fidei commissum*, perpetual in character, and that this clause of the will is void, and therefore that Dr. Laboy acquired the legal title to the estate with a right to dispose of the property by any act *inter vivos* or *mortis causa*, excepting the beneficial interest of the complainant to one-half the net profits which was a right attached to the land, yet how does this aid the appellant Martinez? Dr. Laboy did not dispose of this estate as the owner of the legal title, but did in accordance with the provisions of the Silva will. If by reason of the condition relative to the appointment of his successors he became absolute owner of the property, then at his death it passed to his heirs, forced or otherwise, and is there any proof in this record that in any

way appellant can claim title to this property as an heir at law of Dr. Laboy? She claimed it distinctly under the provisions of the Silva will, through a successor to Dr. Laboy, the first trustee, and she has held it subject to the provisions of that will.

In its opinion and statement of fact, the court below said, at pages 32-33 of the record:

> "That said Jose Laboy immediately upon the death of his said foster mother, went into possession of the estate and managed it up to the time of his death, which occurred on the 13th day of November, 1903, and after taking possession of it, executed on the fourth day of October, 1893, a public document called a 'Substitution of Heirship,' wherein he recited that having taken possession of said estate, *under the provisions of the Silva will* after the death of his foster mother, he must comply with the provision of the will of Silva in the appointment of his own successor, and for that purpose named his wife, the present respondent Josefa Diana y Martinez, and attempted to confer upon her the powers which he claimed had been conferred upon himself by his foster father, Juan Apolinario Laboy, having made him alternative under the Silva will; and thereafter, just before the time of his death in 1903, he, the said Jose Laboy, made his own will and in it, after reciting the facts, attempted to ratify his act in substituting his wife as the trustee or manager under the Silva will.
>
> "That upon the death of her said husband, Jose Laboy, as aforesaid, his said wife, this respondent Josefa Diana y Martinez, claiming to act under the public document and will so

executed by her husband, took possession of the said estate and has so continued up to the present time."

So that counsel, in presenting the argument that the provision as to the appointment of a successor was void originally, and that the first Laboy "took the estate without any such void and illegal obligation," is destroying the only legal ground upon which appellant can claim the right to hold this property. We insist that she has no such legal right, not because any portion of the Silva will was void, but because the widow of Dr. Laboy failed absolutely to comply with its provisions in naming a successor, and that the taking of this property by Jose Laboy and the holding of it by him, and by the appellant, was without warrant, and that the title had been vested in appellee from 1891, the date of the death of Dr. Laboy's widow.

FIFTH.

Appellee is not barred by lapse of time from prosecuting this cause, or estopped by any conduct or acts of itself.

This is a suit in equity and not at law. It involves questions connected with violation and breach of a trust—a trust either direct and expressed under the will of Silva, or a trust implied, and arising from the action of the parties themselves.

In discussing the effect of the statute of limitations this court, speaking through Mr. Chief Justice Fuller, said in the case of Riddle *vs.* Whitehill, 135 U. S., at page 635:

> "Courts of equity sometimes act in obedience to the statute, and sometimes apply it by way of analogy. Where the cause of action is legal and the statute has barred the remedy at law, the defense is as complete in equity as at law, but where the case falls within the proper, peculiar and exclusive jurisdiction of a court of equity the statute is not necessarily applied."

Again, in Speidel *vs.* Henrici, 120 U. S., at pages 386, 387, this court, speaking through Mr. Justice Gray, said:

> "As a general rule, doubtless, length of time is no bar to a trust clearly established, and express trusts are not within the statute of limitations, because the possession of the trustee is presumed to be the possession of his *cestui que trust*. (Cases cited.)
>
> "But this is, in accordance with the reason on which it is founded, and as has been clearly pointed out by Chancellor Kent and Mr. Justice Story, subject to this qualification, that time begins to run against a trust as soon as it is openly disavowed by the trustee, insisting upon an adverse right and interest which is clearly and unequivocally made known to the *cestui que trust;* as when, for instance, such transactions take place between the trustee and the *cestui que trust* as would in case of tenants in common amount to an ouster of one of them by the other. (Cases cited.) This qualification has been often recognized in the opinions of this court, and distinctly affirmed by its latest judgment upon the subject. (Cases cited.)
>
> "In the case of an implied or constructive trust, unless there has been a fraudulent concealment of the cause of action, lapse of time

> is as complete a bar in equity as at law. (Cases cited.) In such a case, Chief Justice Marshall repeated and approved the statement of Sir Thomas Plumber, M. R., in a most important case in which his decision was affirmed by the House of Lords, that 'both on principle and authority, the laches and non-claim of the rightful owner of an equitable estate, for a period of twenty years (supposing it the case of one who must within that period have made his claim in a court of law, had it been a legal estate), under no disability, and where there has been no fraud, will constitute a bar to equitable relief, by analogy to the statute of limitations, if, during all that period, the possession has been under a claim unequivocally, adverse, and without anything having been done or said, directly or indirectly, to recognize the title of such rightful owner by the adverse possessor.' "

From January 15, 1891, the date claimed by counsel for appellant as the beginning of the adverse possession, until within a year before this suit was filed, the Silva will and the rights of appellee under that will were recognized both by Jose Laboy and appellant Martinez. The possession of Laboy and appellee was claimed under this will, and every lease made and delivered by them referred to the Silva will and incorporated parts of it in the written instrument. But even if, in a case such as this, the court would consider a plea of the statute of limitations, advanced by one who, holding a trust attitude, has violated every provision of the trust and attempted to gather to herself rights and properties belonging to the beneficiary, yet we insist that the statute of limitations applicable in this

case would not stand as a bar, even in a common-law action.

Walton's translation of the Spanish Civil Code provides, article 1963:

> "Real actions, in respect to real property are prescribed after thirty years.
>
> "This provision is understood without prejudice to what is provided in respect to the acquisition of ownership or of real rights by prescription."

Section 1959, same Code, provides:

> "Ownership and other real rights in respect to real property shall also be prescribed by the uninterrupted possession of the same for thirty years, without the necessity of title or good faith, and without distinction of persons, absent or present, save the exception set forth in art. 539." (This article refers to easements.)

The Revised Code of Porto Rico, 1902, at section 1869, provides:

> "Ownership and other property rights in real property shall also prescribe by uninterrupted possession of the same for thirty years, without the necessity of title nor good faith, and without distinction between present and absent persons with the exception mentioned in section 546 of the second article, chapter 1, title VII, of the 2nd book of this Code."

Section 1957, Walton's Code, is as follows:

> "Ownership and other real rights in respect to real property shall be prescribed by possession for ten years as to persons present, and

> by twenty years in respect to those absent, *when held in good faith and under a just title.*"

Section 1858 of the Code of 1902 re-enacts this section. So that the law stands today barring a suit to recover real estate, if not prosecuted within thirty years, and confirming title to real estate in a person who has held it for ten years, as against those present, when the holding *is in good faith and under a just title.*

Section 1959, Walton's Code, provides:

> "Ownership and other real rights in respect to real property shall also be prescribed by the uninterrupted possession of the same for thirty years, without the necessity of title or good faith, and without distinction of persons, absent or present, save the exception set forth in art. 539."

Appellant cannot claim uninterrupted possession for thirty years. She claims from 1891 to 1904. Her claim, therefore, must rest upon possession for ten years, held in good faith and under a just title. She has been holding absolutely without title, with the tacit consent, it is true, of the appellee, for a portion of the time, but her own acts show that the holding was not in good faith, and the suit was instituted as soon as the vicious conduct of the appellant became known to appellee.

According to brief of counsel for appellant, she had no title of any character. If she could not hold as a successor, if that provision of the will were void, then she was absolutely without title or without color of title.

We insist that the doctrine of estoppel has no place in the case at bar; that the leases that were considered by the court and held null and void were leases in which the extensions had been made without the knowledge, consent, or ratification of appellee. These leases were made at ridiculously low prices, and the portion due appellee collected in advance.

In the statement of fact made by the court (Rec., p. 55) it appears that one of the lessees, the appellant Chardon, voluntarily came into court and agreed to an increase of his rental from $240 a year to $1,350. This statement shows that while large portions of these lands were worth a yearly rental of $6 to $12 per acre, and even more, that some of the leases and extensions were made for less than a dollar an acre. The parties themselves were before the court, all the leases and facts were considered by the court, and by reason of the frauds permeating these leases, the smallness of the consideration for them, and other facts and circumstances, the court declared them void. It is impossible to believe that these extensions could have been agreed upon between Laboy and his widow, the appellant, and the lessees, without the fraudulent purposes of appellant being known to her co-appellants.

CONCLUSION.

The appellant is not in court with clean hands. She has violated every duty due to appellee. She has destroyed the earning capacity of the estate, and refused even to deliver over to the appellee its portion of these decreased earnings. She has attempted to secure by

ex parte proceedings a possessory title and then a dominion title to the lands; she has no legal right to the possession under the will of Silva, the line of succession having failed at the death of Dr. Laboy's widow in 1891, and we ask that the true owner of this estate, the appellee, be protected in its rights and through it the bounty of Silva pass to the poor sick of his district, and that the decree of the court below be affirmed.

G. E. HAMILTON,
JOHN W. YERKES,
Attorneys for Appellee.

M. J. COLBERT,
J. J. HAMILTON,
Of Counsel.